1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

LEGAL ACTIONS IN ADULTERY AND WIFE-STEALING

CONFLICTS IN MARITAL LAW AND SOCIAL CUSTOM

Though it was illegal for a Comanche wife to desert her husband, to do so was a well established Comanche custom. More than that, custom provided for effective group cooperation in extension of aid to the would-be deserting wife and her absconder. Custom and law worked at cross-purposes. The cause lay in the clash of two opposing fundamental interests which could not be integrated. The result was such "lawless" behavior as Mr. Jerome Frank describes as arising from the "pretend rules" which are so common in human societies, rules which give expression in law to principles mouthed but not wholly believed in.[1]

Before the law Comanche woman was a quasi-chattel; her man was her *baron*. Under the system of contract marriage which prevailed, a girl was bestowed upon a man ofttimes many years her senior and not of her own choosing. According to the ideal pattern she adjusted herself to the arrangement, settling into a smooth and dutiful marital career. It is the expressed belief of the older Indians that such marriages were more successful and lasting than those which were formed of romantic liaison. Unfortunately, one cannot determine the relative percentages of successful marriages for the Comanche. The Comanche law system buttressed this marital arrangement by providing institutionalized instruments for the collection of restituitive damages by any husband whose sexual claim upon his wife was infringed upon by an adulterer or wife-absconder. The husband could mete extreme punishment upon the unfaithful and hapless wife. A marriage had the full protection of the law.

The basic belief that a man's rights in marriage were exclusive (except for the privileges extended to a brother under the anticipatory levirate) and not to be impinged upon unless he had released these rights through recognized divorce, ran into counter currents of custom in the existing notions of romantic marriage (wherein younger couples sought love-mates of their own choosing) and the prevailing behavior of males in the competitive struggle for personal ranking and the attainment of bravery status. The competition for bravery ranking which was institutionalized in coup counting found its opportunity for expression *within* the tribe in the taking of women from their husbands. This threw the wife-taker and the husband into direct conflict. Not raw conflict, however, for as shall be seen, mechanisms for settling the issue without fighting had been developed.

[1] Jerome Frank, *Lawlessness* (Encyclopaedia of the Social Sciences, vol. 10, 1937), p. 227.

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X627 The Comanches showed a sense of justice at work and an awareness of the function of legal institutions in their society when they accorded the aggrieved party a customary massing of subsidiary force which was apparently denied to the aggressor. The dynamic quality of Comanche culture and the mark of creative genius is to be seen in the way in which this principle of equalization was refined and fitted to meet the needs of the person who had no group of "brothers" to back him in need. Comanche juridical processes were more than a mere phase of the status struggle among males. Men whose status was so low that on the personal and kinship basis they were, in effect, without status were still guaranteed protection under the Comanche law. This was done by harnessing the status drive in the society to the needs of the weak and aggrieved. There was the institution of *champion-at-law*.[14]

The functioning champion-at-law is best revealed in action through cases.

Case 12. Wife-stealing: Red Crooked Nose vs. a young warrior
Informant: Visits Her Relatives

X627 "The wife of Red Crooked Nose absconded with a young, good-looking warrior.
684 In the raiding party were four other men and another woman. For two years the
581 pair remained away, and no one in the main camp knew where they were living. But one day some hunters found their camp and reported it to Red Crooked Nose. He was determined to get his wife back, but he had few war deeds to his credit. So he asked a brave, well-known warrior to go with him. The warrior consented to go.

"When they reached the absconder's camp, the woman saw them coming and ran to her young husband, saying that she wanted to stay with him. But when the young man saw Red Crooked Nose's champion he said, 'Against such a man I have no chance to keep you.'

"So they met outside the tipi. Red Crooked Nose picked up a quiver of arrows belonging to the young man, but his wife told him, 'Put them down. You can't do any better with them than their owner can.'

"Food was offered the newcomers, and they stated their mission. They said that they would accept no damages in place of the woman, that Red Crooked Nose needed her to care for their young child. So the young man ordered her horse brought, upon which was a good saddle, a silver-braided bridle, and good blankets. He told the woman to dress up. He told her, 'Take everything nice that belongs to you. This old man can't get things like these for you.'

"She gathered all her belongings, including fifteen horses. She was ready to

[14] There is no special word in the Comanche lexicon for this personage. A man acting as champion-at-law was simply referred to as tékniwap (war leader). Only men who were war leaders were sought to act as champions. Their legal activity on behalf of others was merely an incidental function of their status as ranking braves in the tribe.

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start back with them, but she cried pitifully to have to leave her young lover. After they had started, she lagged behind sullenly. 627x

"They had gone. The young absconder broke camp. He mounted and rode on past them. As his horses ran by, Red Crooked Nose killed one of them and called upon his party to take the meat he had shot for them. Then the owner of the dead horse scorned him, 'My feelings aren't hurt. *I* can get plenty of horses—like the grass, so many!' And he rode on.[15] 684 581

"He knew that Red Crooked Nose would not have dared to kill his horse without the warrior as protector.

"While stopping one night they heard that enemies were coming. The women were sent on. The men prepared for war. Before the battle started, the young man donned his best war paraphernalia. With his feathers flying he rode past the camp of Red Crooked Nose. He fought conspicuously and was killed.

"The champion saw him go down.

"He called to Red Crooked Nose, saying, 'It was we who caused him to be killed. I know you are a coward, but you have to go and walk in front of the enemy to protect us while I carry off his body.'

"Thus they took the young man off the field, and put his body on a horse. When the woman saw his body brought back, she tore her dress apart, slashed her body all over with her knife, and cut her hair off short. She embraced his body and wanted to throw her jewelry away in mourning. But the people pulled her away, telling her to keep it in remembrance of him.

"Red Crooked Nose and his champion rode up and mourned him. Then he was wrapped in blankets and buried. The camp broke up and continued on its way."

Though it is the activities of the intermediary which we must here examine, the fine devices of sarcasm and ridicule which make this history so rich in intrinsic sanctions deserve attention. The woman mocks her husband. The lover mocks. These are expressions of rage, or attempts to egg him into overreaching his position. The latter occurs. Again the lover mocks. But the combination of grief and shame works in him as his mockery seems to have worked in the husband. He seizes the occasion for a protest-sacrifice equivalent to suicide, save that it serves his tribe. The champion turns upon the championed. Red Crooked Nose's mourning is a penance. And one may be certain that his later repute suffered. The people told *her* to keep her jewelry in remembrance of a "wrong-doer," who, over-penalized, had made himself a hero. 627x 558

[15] No empty boast for the young man. And it cut two ways. In itself this killing of a horse, over and above taking back the woman, is wholly proper. The overdoing lies in these points: the woman had brought double a heavy indemnity, the adjustment was over, and the strength of the husband was not equal to the deed he was performing. He was over-reaching and the young man's disdainful ignoring of his act showed him up in just that way.

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inside the kin group was the business of nobody outside the group; and that inside the group, the way of handling a situation depended largely on personality and temperament.

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PRIVILEGED HOMICIDE

One type of killing which was not murder was the privilege of the husband to kill his wife. This is a variant of the purely in-group character of in-group friction. For this there was no retaliation. It was the acknowledged right of the man, and no one would lift a finger to legal action. Not only was the position of woman largely that of chattel, but the chattel passed from the original family to the husband. In return the obligation to provide food for the father-in-law lay on the husband. Escape for the woman lay in absconding,[3] but the number of instances in which the run-away wife was slain or mutilated by the husband is notable. In the twenty-two cases of wife-absconding collected from the Comanches the woman disputed was killed by her husband in four. Three adulterous wives were killed by their husbands in twenty-three instances of discovered transgression. Thus in forty-five Comanche cases of marital infidelity, seven women were slain at the hands of the husband or his henchmen. This is one in six.

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Though the sample is admittedly too small to be *statistically* significant, and is possibly biased through selection on the part of informants, it is not without significance that eighteen percent of the adulterous wives were killed. That the statistical proportion cannot be greatly in error is buttressed in the wry observation of Rhoda Bluefoot that the wives of her father and his brothers never ran away; they were afraid of what would happen, because their men were well known as fierce fighters.

That the kinship group showed no inclination to retaliate when a husband killed his wife—their blood relative—can mean nothing else than a true relinquishing of the kinship bond upon marriage in favor of a supreme marital bond. That a father had to beg his son-in-law not to harm his daughter who had erred, and even offered gifts that her husband would not harm her (see pages 101–102) proves this.

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The fact of potential marriage through sororate rights did not, however, establish the legal right of a brother-in-law to kill his wife's sister. She was not yet his wife; therefore, not his for disposal—not even when the woman was *also* the wife of the slayer's brother, giving thereby additional *expectant* rights through the levirate. The Comanche captive, Lost, met his death for killing the sister of his wife, who according to She Invites Her Relatives, ——— was at the same time the wife of his brother.

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[3] Women informants used by Dr. Mirsky held that household sabotage was the easiest way out. A woman could shirk her duty until her husband threw her out in disgust.

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627 754 684 522 "When he came home after the smoking was done, he found two people in the bed. One was his wife, and the other a young brave. The brave asked the pardon of the medicine man. What could he do? He was in the uncomfortable circumstances of being unable to separate from his paramour. He wildly offered the husband anything that might be required for his release.

"The husband turned on his heel and went outside. He got a switch. With this in his hand he entered the tipi again and gave the lovers a thorough dusting. After a while he wanted to go to bed. But the pair was still lying there, unable to get loose. So, calling on another of his wives, the medicine man ordered her to help him drag the luckless lovers outside the tipi. He pulling on the man, the wife upon the woman, they dumped the couple on the ground and left them.

"When morning came the parents of the young brave were about to move camp and became concerned with their boy's absence. Scouring through the camp to find him, they came upon their youth—attached still to the woman just as the irate husband had left them. Seeing this, the boy's father went to the medicine man and begged him to set the youth free.

"The husband refused. He said he loved his wife and he wanted her to get enough of it.

"Finding his own entreaties of no avail, the father went to some warriors of great influence and begged them to intercede. They went to the medicine man and offered him anything he might want to withdraw the charm. After this representation the medicine man consented; he went into the tipi and pulled the arrow out from under the bed. With this the pair got loose from each other.

"The father of the youth paid heavy damages to the medicine man, and that settled that part of the case.

"Then the father of the guilty wife came to plead for his daughter, that she wouldn't get cut up or killed by her husband. He offered his son-in-law gifts and [558] begged him not to hurt his child. He suggested that since she was guilty, it would be well to make her the slave of the other two wives, but he would not like to see her injured. The medicine man refused the gift from his father-in-law, but agreed to keep the woman, though she could no longer be his favorite wife. Thereafter she had to be a slave in his household to her younger sisters."

606 581 562 Here is a father begging his son-in-law not to harm his daughter. Propitiatory gifts are offered! As was noted in the discussion of murder, the title to a woman passed completely to the husband on marriage. That he refused the gift and yet observed the father's wish seems merely to indicate the nobility of the husband in the case.

ORDEAL

627 Conditional curse is closely akin to ordeal. In view of the wide spread of ordeal in the Old World and its peculiar usefulness in law, its general neglect by the American Indians is unique. Yet neglect need not mean

29: Hoebel E-4,5 (1933) 1969 N06 Comanche N06

and actually in many, a girl had no formal voice in the choice of her husband. Her brothers gave her away in exchange for a consideration. The takers were usually older and established warriors and hunters who had the goods. In the Comanche ideal such arrangements made for the best marriages. But they were marriages in which the woman was at the mercy of her husband. Working against the stability of such marriages was a strong current of romantic idealism among the young. The ambition of the adolescent girl was to be a *naiβi*,[5] i.e., a beautiful maiden with lustrous, black hair hanging in long braids, and dressed in a fine fringed buckskin dress. The young bucks for their part strove to attract the attention of the girls by playing the role of *tuiβttsi*: "a handsome young man who looks good on a horse." Wife-absconding was really an escape in which a frustrated wife sought a more romantic match with a daring warrior.

Comanche elopements were invariably linked to a war party. The man in the case would be going on a raid with his friends, and he would make an assignation with the woman to go along. It was a way provided by custom to violate the marriage rights of the rightful husband as defined by custom and sustained by law! A nice example of internal inconsistency in the ways of a culture.

When a woman and her lover took off with a war party, two courses were open to the jilted husband. He could mount in hot pursuit in the hope that he could overtake them before they reached enemy territory. Or he could bide his time until they returned from the raid. In enemy country he could not press his suit; here all Comanches had to stand shoulder to shoulder. Aside from this, he could institute his action wherever he might be able to confront his tortfeasor. He might take along some compatriots—brothers, real or putative—to strengthen his courage and his arm, if need be. A real man, however, went alone. It was not necessary for him to gather witnesses, for a Comanche legal action was in no sense a trial. Questions of evidence rarely, if ever, entered. The wife-stealer, or even the adulterer, had no desire to conceal his deed; his aim was to flaunt his prestige in the face of the challenged husband.

If he followed the dictates of decorum, he politely addressed the defendant as "brother." The defendant replied in kind. Did not Comanche brothers share their wives? Syllogistically the reasoning runs:

> Men who share a wife are brothers.
> This man has assumed a share in my wife.
> Therefore, he is my brother.
> (But he is going to pay for the privilege!)

The immediate goal of the prosecuting husband was to get *nanewɔkə*, restitutive damages. As an opening gambit he placed his demands high,

[5] Phonetic symbols are used as in the International Phonetics System.

32: Gilles O,X-3 (1902-c.1910) 1974
NO6 Comanche NO6
Oklahoma

In Comanche society, once a woman left her father's camp she must of necessity become a wife. There was not another nook or cranny of Comanche society into which she could crowd herself. There were no avocations open to her. Prostitution and concubinage were not countenanced, and the enslavement of an unattached Comanche woman by another Comanche was completely unthinkable. (An example of the length to which a Comanche's obligation to respect the rights of other Comanches extended may be seen in the situation of the semiwild dogs that infested every camp. These dogs were not pets—they were parasites. But they could be neither killed nor mistreated. They were relatives of the coyote; and since the coyote was a relative of the Comanche, one had as well abuse another Comanche as one of these semiwild dogs.)

Provision for widows was made in this manner: if a man was killed, or if he died from disease, his wives became the wives of his brother or brothers, and his children became the children of his brother or brothers. There was also a relationship known as blood brotherhood, in which two men mingled their blood together. Such a blood brother could succeed as the husband of his deceased blood brother's wives.

During the more than five years when I was among the Comanches and was dealing with them, I became sold on polygamy as a way of life for them. They made it work. After twenty-six years of peace, there continued to be a much larger number of women than men. Though all but three of the old warrior group that I knew had more than one wife, and a number had three or more, I knew of no single man in that age group. Neither were there surplus unattached women. And women must have outnumbered men in the age group of forty-five years and over, by considerably more than two to one.

As nearly as I was able to discover, the multiple wife situation was a development rather than the result of a plan. A man did not decide he was going to have two, three, or more wives and go out and purchase the number he had decided upon. He started modestly, as a young warrior, with the purchase of one wife. Then as he prospered, gained a reputation, and accumulated a horse herd and maybe a baby or two, the work would become too heavy for one wife. Obviously they couldn't secure a hired girl, so they looked around and probably decided between them who would make a satisfactory and agreeable number two wife. When possible, a younger sister of the number